UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

BRUNSWICK INTERSTATE OASIS, INC., d/b/a ECONO LODGE, et al.,	)	
Plaintiffs	)	
v.	)	***Civil No. 97-131-P-C***
DONALD E. NASON, et al.,	)	
Defendants	)	

RECOMMENDED DECISION ON DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

The plaintiffs invoke the court's diversity jurisdiction to assert claims of negligence, negligent and intentional infliction of emotional distress, trespass and loss of consortium in connection with an incident in which a tractor-trailer careened into a Brunswick, Maine motel after the driver allegedly fell asleep. The plaintiffs seek both compensatory and punitive damages. Named as defendants are the driver of the truck and his employer. They seek summary judgment in their favor on the claims of intentional infliction of emotional distress and trespass and on the claims for punitive damages. I recommend that the motion be granted.

I. Summary Judgment Standards

Summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). "In this regard, 'material' means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute is resolved favorably to the nonmovant. By like token,

'genuine' means that 'the evidence about the fact is such that a reasonable jury could resolve the point in favor of the nonmoving party . . . .'" *McCarthy v. Northwest Airlines, Inc.*, 56 F.3d 313, 315 (1st Cir. 1995) (citations omitted). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining whether this burden is met, the court must view the record in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences in its favor. *Cadle Co. v. Hayes*, 116 F.3d 957, 959 (1st Cir. 1997). Once the moving party has made a preliminary showing that no genuine issue of material fact exists, "the nonmovant must contradict the showing by pointing to specific facts demonstrating that there is, indeed, a trialworthy issue." *National Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (citing *Celotex*, 477 U.S. at 324); Fed. R. Civ. P. 56(e). "This is especially true in respect to claims or issues on which the nonmovant bears the burden of proof." *International Ass'n of Machinists & Aerospace Workers v. Winship Green Nursing Ctr.*, 103 F.3d 196, 200 (1st Cir. 1996) (citations omitted).

In this instance, the defendants have presented no evidence for the court to consider in support of their motion, opting instead to accept as true for purposes of their motion the allegations in the plaintiffs' First Amended Complaint ("Complaint") (Docket No. 9). The plaintiffs do present evidence outside the pleading for the court's consideration.

II. Factual Background

The allegations in the complaint, as supplemented by the evidence submitted by the plaintiffs and viewed in the light most favorable to them, reveal the following: On May 23, 1996 at approximately 3:15 p.m., defendant Donald E. Nason was driving a tractor-trailer owned by defendant Donnelly Farms, Ltd. on Pleasant Street in Brunswick. Complaint at ¶¶ 5, 9-10, 15.

Nason was an employee of Donnelly Farms and was acting within the course and scope of his employment. Defendant Donnelly Farms, Ltd.'s Objections and Responses to Plaintiffs' First Request for Admission of Facts, Exh. B to Plaintiffs' Statement of Material Facts ("Plaintiffs' SMF") (Docket No. 22), at ¶ 8. He was completing the last leg of a round trip between New Brunswick, Canada and Florida — a journey of approximately 1,896 miles. Defendant Donald Nason's Objections and Responses to Plaintiffs' First Set of Interrogatories ("Interrog. Resp."), Exh. A to Plaintiffs' SMF, at ¶ 25. Nason's travels between Florida and Brunswick, Maine involved approximately 36.5 hours of driving time. *Id.*

Nason exited Interstate 95 at Brunswick and, as he neared the business district on Pleasant Street, fell asleep at the wheel of the truck. Complaint at ¶15; Interrog. Resp. at ¶ 2. The speed limit on Pleasant Street was 35 miles per hour; the truck was observed traveling at approximately 60 miles per hour when it hit another vehicle and crashed through a wooden fence of the Econo Lodge Motel. Complaint at ¶¶ 8, 13. Nasson had intentionally falsified his log book and had driven over his legally permitted hours of operation.[1] *Id*. at ¶¶ 15, 30. Plaintiff Cristina Civita, one of the motel's resident managers, was preparing to plant flowers in front of the motel at the time of the accident. *Id*. at ¶ 3, 9. She heard a loud crashing noise and, as she looked up, she saw the truck coming directly toward her. *Id.* at ¶ 10. Terrified, she was unable to move as the truck came within feet of running her over

[1] The record also includes an uncertified copy of a Uniform Summons and Complaint form issued by a state police trooper at the accident scene and charging Nason with the possession of intoxicating beverages in a commercial vehicle. *See* Exh. D to Plaintiff's SMF. The second page of this document bears Nason's signature, indicating his plea of guilty to the charge. *Id*. at 2. The defendant objects to consideration of this exhibit as "contrary to the law and rules." Defendant's Reply Memorandum, etc. (Docket No. 23) at 3 n.2. The court need not reach any evidentiary issues raised by this document, inasmuch as it is probative of no issue that is relevant to the pending summary judgment motion. Nothing in the record suggests that alcohol played a role in the accident.

and crashed into the part of the motel complex that served as her home and the motel's office, destroying the building and its contents. *Id*. at ¶¶ 10-12. Also preparing to plant flowers was motel employee and plaintiff Marcia Hagans, who ran out of the way of the truck, falling down an embankment and suffering personal injury. *Id*. at ¶¶ 2, 9, 11, 13-14.

The remaining plaintiffs are Inge and Ray Weymouth, sole shareholders of Econo Lodge, their corporation and Joseph Civita, husband of Cristina Civita and the person who shared her duties as resident manager of the motel. *Id*. at ¶¶ 1, 3. All plaintiffs assert claims of negligence. *Id*. at ¶¶ 18-21, 31-34, 47-50, 59-63, 69-72. Hagans and Christina Civita assert claims for negligent and intentional infliction of emotional distress. *Id*. at ¶¶ 22-28, 35-41. Christina Civita, Inge Weymouth, Ray Weymouth and Econo Lodge assert claims of trespass. *Id*. at ¶¶ 42-44, 64-66, 73-75. Joseph Civita asserts a loss-of-consortium claim. *Id*. at ¶¶ 54-56. All plaintiffs seek punitive damages. *Id*. at ¶¶ 29-30, 45-46, 57-58, 67-68, 76-77.

III. Discussion

The defendants' first contention is that they are entitled to summary judgment on the claims of Hagans and Cristina Civita for intentional infliction of emotional distress. To recover on an such a claim under Maine law, a plaintiff must show "either that the defendant intentionally or recklessly inflicted severe emotional distress or that his or her conduct was substantially certain to inflict severe emotional distress," and that the conduct at issue "was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious[] and utterly intolerable in a civilized community." *Davis v. Currier*, 704 A.2d 1207, 1997 WL 613451 at *1 (Me. Oct. 7, 1997) (citations and internal quotation marks omitted); *see also Colford v. Chubb Life Ins. Co. of Am.* 687 A.2d 609,

616 (Me. 1996), *cert. denied,* 138 L.Ed.2d 194 (1997) (court makes initial determination of whether conduct was extreme and outrageous, leaving issue to jury only where reasonable people may differ on issue). The conduct must be causally related to the emotional distress suffered by the plaintiff or plaintiffs. *Colford,* 687 A.2d at 616. The parties are in agreement that the conduct at issue was not intentional. The defendants' position is that falling asleep while driving a tractor-trailer is not a sufficiently reckless act to trigger liability for this tort, is not substantially certain to inflict severe emotional distress and is not sufficiently atrocious or utterly intolerable.

In arguing to the contrary, the plaintiffs make reference to Nason's "checkered driving history," "a pattern of falsifying his log book" and his "transporting liquor within the cab of his tractor-trailer." Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment, etc. (Docket No. 21) at 4-5. Even assuming the truth of all three contentions, none is causally connected to any emotional distress suffered by Hagans and Cristina Civita. The court must focus on the conduct that is truly at issue, which one may variously characterize as falling asleep at the wheel of an 18-wheel truck or driving such a vehicle while tired.

As the plaintiffs point out, there has been something of a national outcry in recent years over what is widely perceived to be a proliferation of accidents caused by tired truck drivers. At the heart of this concern is the perception that truckers do not take the rests they are legally required to, falsify their log books to hide the violations and are then too tired to drive safely. In a state that is almost entirely dependent on cars and trucks for its transportation needs, no one can seriously dispute that these concerns have legitimacy and can be vindicated in court in an appropriate case. However, in deciding summary judgment motions, the court is required to limit itself to the evidence in the record, drawing any reasonable inferences in favor of the non-moving party. In this instance, the

plaintiffs — who have the burden of proof — have adduced evidence suggesting only that (i) Nason fell asleep, (ii) his log book had been falsified and (iii) he had driven more hours than the law permits to some unspecified extent. There is no evidence that would permit the factfinder to determine the extent to which Nason had falsified his log book, how many hours he had driven in excess of those permitted to him, particularly in the period immediately preceding the accident, and, thus, whether his log book violation had any causal relationship to the accident.[2] Absent this kind of information, the facts of record do not describe conduct that a reasonable person would regard as so extreme and outrageous as to exceed all possible bounds of decency. The redress for the injuries allegedly suffered by Hagans and Cristina Civita lies in the negligence-based torts, and the defendants are entitled to summary judgment on the claims of intentional infliction of emotional distress.

I next take up the last of the defendants' three contentions, that they are entitled to summary judgment on the trespass claims. According to the defendants, no claim of civil trespass lies in this case because the plaintiffs cannot prove an intentional invasion of property rights. I agree.

As the defendants note, the Law Court long ago declared that, although "[e]very unauthorized entry on the land of another is a trespass," there is a civil remedy for trespass only if such entry is "intentional and voluntary." *State v. Tullo*, 366 A.2d 843, 847 (Me. 1976); *see also Restatement (Second) of Torts*, § 158 (defendant liable for trespass "if he intentionally . . . enters land in the

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[2] I note that Nason's interrogatory responses contain certain assertions as to the number of hours he had slept in the 48 hours preceding the accident. *See* Interrog. Resp. at ¶¶ 6-7. These responses are not cited in the plaintiffs' factual statement submitted pursuant to Local Rule 56. "The parties are bound by their [Local Rule 56] Statements of Fact and cannot challenge the court's summary judgment decision based on facts not properly presented therein." *Pew v. Scopino*, 161 F.R.D. 1, 1 (D.Me. 1995).

possession of the other, or causes a thing or a third person to do so"). The case on which the plaintiffs rely, *Hayes v. Bushey*, 160 Me. 14 (1964), provides no support for a contrary view. Like the instant case, *Hayes* involved a truck that left a public road and collided with a building. *Id*. at 15. The Law Court found a genuine issue of material fact on the issue of liability for trespass because the driver alleged that he had been forced off the road and onto the plaintiff's property by a vehicle approaching the truck from the opposite direction on the highway. *Id*. The defendant in *Hayes* therefore intended to enter the plaintiff's land and the case is properly viewed as a lesson in when an act, though intentional, is not voluntary. *Id*. at 18 ("an involuntary or accidental entry upon the land of another is not a trespass") (citation omitted). As with the claims for intentional infliction of emotional distress, redress of the injuries alleged in the trespass claims lies in the negligence realm.

Finally, the defendants contend they are entitled to summary judgment on the plaintiffs' claims for punitive damages. In Maine, "[p]unitive damages are available if the plaintiff can establish by clear and convincing evidence that the defendant's conduct was motivated by actual ill will or was so outrageous that malice is implied." *Palleschi v. Palleschi*, 704 A.2d 383, 385-86 (Me. 1998) (citation omitted). There is no question here of actual ill will, and the defendants contend that even a plaintiff-favorable view of the record will not support a finding of implied malice.

I agree with the defendants that the evidence in the present record would not permit a factfinder to conclude that Nason's conduct was so outrageous that malice should be implied. It seems obvious that, if malice cannot be implied when a driver goes through a red light and then, speeding in a 25-mile-per-hour zone, hits another vehicle with sufficient force to shear it in half, *see Tuttle v. Raymond*, 494 A.2d 1353, 1354 (Me. 1985), then falling asleep at the wheel is likewise not

sufficiently outrageous even when, as here, the act causes damages of significant magnitude. The only additional factor is Nason's having falsified his log book so as to under-report the number of hours he had driven to some unspecified extent. Obviously, and as already discussed, the illegal act of falsely reporting the hours Nason had driven prior to the accident is itself not a cause of the accident. The underlying wrong that a truck driver can obscure by falsifying a log book — driving too many hours without sufficient rest — might be sufficiently outrageous in appropriate circumstances to sustain a finding of implied malice. Here, however, the record is devoid of evidence of the number of hours Nason actually drove prior to the accident and, thus, contains nothing from which a factfinder could draw any inferences whatsoever as to whether Nason fell asleep because of conduct that was so outrageous that he acted with implied malice. The defendants are entitled to summary judgment on the plaintiffs' claims for punitive damages.

IV. Conclusion

For the foregoing reasons, I recommend that the defendants' motion for partial summary judgment be **GRANTED** and that, accordingly, judgment be entered in favor of the defendants on the claims for intentional infliction of emotional distress (Counts III and VII) and trespass (Counts VIII, XV and XVIII) as well as the claims seeking punitive damages (Counts IV, IX, XIII, XVI and XIX).

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 17th day of March, 1998.

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David M. Cohen
United States Magistrate Judge